



January 23, 2004

HOUSE BILL No. 1192

DIGEST OF HB 1192 (Updated January 21, 2004 3:48 pm - DI 96)

Citations Affected: IC 4-15.

Synopsis: State employee complaint and arbitration procedure. Establishes complaint and arbitration procedures for state employee grievances.

Effective: July 1, 2004.

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January 13, 2004, read first time and referred to Committee on Labor and Employment.
January 22, 2004, amended reported — Do Pass; reassigned to Committee on Ways and Means pursuant to Rule 127.

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HB 1192—LS 6302/DI 102+



January 23, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1192

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-15-2-35 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 35. **(a)** Any regular
3 employee may file a complaint if ~~his~~ **the employee's** status of
4 employment is involuntarily changed or if ~~he~~ **the employee** deems
5 conditions of employment to be unsatisfactory. However, the complaint
6 procedure shall be initiated as soon as possible after the occurrence of
7 the act or condition complained of and in no event shall be initiated
8 more than thirty (30) calendar days after the employee is notified of a
9 change in ~~his~~ **the employee's** status of employment or after an
10 unsatisfactory condition of employment is created. Failure to initiate
11 the complaint procedure within such time period shall render the
12 complaint procedure unavailable to the employee. The following
13 complaint procedure shall be followed:

14 Step I: The complaint procedure shall be initiated by a discussion
15 of the complaint by the employee and ~~his~~ **the employee's**
16 immediate supervisor and, if a mutually satisfactory settlement
17 has not been made within two (2) consecutive working days, ~~such~~

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1 **the** complaint may be referred to Step II.

2 Step II: The complaint shall be reduced to writing and presented
3 to the intermediate supervisor. If a mutually satisfactory
4 settlement has not been reached within four (4) consecutive
5 working days, ~~such~~ **the** complaint may then be referred to the
6 appointing authority.

7 Step III: The appointing authority or ~~his~~ **the appointing**
8 **authority's** designated representative shall hold ~~such~~ **the**
9 hearings and conduct ~~such~~ **the** investigations ~~as he~~ **the**
10 **appointing authority** deems necessary to render a decision and
11 shall make ~~such~~ **a** decision in writing within ten (10) consecutive
12 working days.

13 **Step IV:** Should the appointing authority or ~~his~~ **the appointing**
14 **authority's** designated representative not find in favor of the
15 employee, the complaint may be submitted within fifteen (15)
16 calendar days to the state personnel director. The director or ~~his~~
17 **the director's** designee shall review the complaint and render a
18 decision within fifteen (15) calendar days. If the decision is not
19 agreeable to the employee, an appeal may be submitted by the
20 employee in writing **either** to the commission **or to arbitration**
21 no later than fifteen (15) calendar days from the date the
22 employee has been given notice of the action taken by the
23 personnel director or ~~his~~ **the director's** designee.

24 ~~After submission of the appeal,~~ **Step V: (A) If an employee**
25 **elects to submit the appeal to the commission,** the commission
26 shall, prior to rendering its decision, grant the appealing employee
27 and the appointing authority a public hearing, with the right to be
28 represented and to present evidence. With respect to all appeals,
29 the commission shall render its decision within thirty (30) days
30 after the date of the hearing on the appeal. If the commission finds
31 that the action against the employee was taken on the basis of
32 politics, religion, sex, age, race or because of membership in an
33 employee organization, the employee shall be reinstated to ~~his~~ **the**
34 **employee's** position without loss of pay. In all other cases, **unless**
35 **judicial review of the decision is requested in accordance with**
36 **IC 4-21.5-5,** the appointing authority shall follow the
37 ~~recommendation~~ **decision** of the commission, which may include
38 reinstatement and payment of salary or wages lost by the
39 employee, which may be mitigated by any wages the employee
40 earned from other employment during a dismissed or suspended
41 period.

42 ~~If the recommendation of the commission is not agreeable to the~~

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employee; the employee, within fifteen (15) calendar days from receipt of the commission recommendation; may elect to submit the complaint to arbitration. The cost of arbitration shall be shared equally by the employee and the state of Indiana. The commissioner of labor shall prepare a list of three (3) impartial individuals trained in labor relations; and from this list each party shall strike one (1) name. The remaining arbitrator shall consider the issues which were presented to the commission and shall afford the parties a public hearing with the right to be represented and to present evidence. The arbitrator's findings and recommendations shall be binding on both parties and shall immediately be instituted by the commission.

Step V: (B) If an employee elects to submit the appeal to arbitration, an arbitrator must be selected from:

- (i) the American Arbitration Association; or**
- (ii) the Federal Mediation and Conciliation Service, if an arbitrator is not available from the American Arbitration Association;**

according to selection procedures established by the arbitrator's association or service. The costs of arbitration under this Step shall be shared equally by the employer and the employee.

Step VI: The decision of the commission under Step V(A) or the arbitrator under Step V(B) is a final order subject to judicial review in accordance with IC 4-21.5-5. The commission's or arbitrator's decision in Step V is binding unless a party requests judicial review.

(b) An employee who files a complaint under subsection (a) may choose at the employee's own expense a representative who is inside or outside of the employee's agency or facility to represent the employee during Steps III through VI of the complaint procedure.

(c) If the employer does not comply with the timelines set forth in subsection (a) at a particular Step of the complaint procedure, the employee's complaint proceeds to the next Step of the complaint procedure.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1192, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 21, delete "employee or the employee's representative." and insert "**employee**."

Page 3, line 28, after "choose" insert "**at the employee's own expense**".

Page 3, delete lines 35 through 42.

Delete pages 4 through 9.

and when so amended that said bill do pass.

(Reference is to HB 1192 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 7, nays 5.

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